MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, ~~1985~~

Mark J. Bertler
Public Affairs Coordinator
Planned Parenthood Affiliates of Michigan
217 Townsend
P.O. Box 19104
Lansing, Michigan 48901

Dear Mr. Bertler:

This is in response to your letter regarding the use of statements filed pursuant to the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), in solicitation conducted by Planned Parenthood Affiliates of Michigan.

You state that your review of the Act fails to disclose any definitions for the terms "commercial solicitation" and "commercial purpose" used in section 16(3) of the Act (MCL 169.216). That subsection provides in relevant part:

> "(3) A statement open to the public under this act shall not be used for purposes of commercial solicitation or any commercial purpose."

A civil penalty of up to $1,000.00 is provided for a violation. Before the Act became law in Michigan, Congress enacted a provision similar to section 16(3). The relevant language is found at 2 USC §438(4) which states:

> " . . . information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee."

The Federal Election Commission subsequently promulgated regulations which contained a provision which interprets the statutory language. That interpretation is currently found at 11 CFR §104.15, which provides:

> "§104.15 Sale or use restriction 2 U.S.C. 438(1)(4)).
> (a) Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed with the Commission Clerk of the House Secretary of the Senate, or any

> Secretary of State or other equivalent State officer, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committee.
>
> (b) For purposes of 11 CFR 104.15 'soliciting contributions' includes soliciting any type of contribution or donation, such as political or charitable contributions.
>
> (c) The use of information, which is copied or otherwise obtained from reports filed under 11 CFR Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes."

The Federal and Michigan statutes differ in terminology. The Act bans the use of information from the report for "commercial solicitation" and "commercial purpose." The Federal law on the other hand prohibits use of information from reports for "the purpose of soliciting contributions or for commercial purposes."

The significant difference is that in the Federal law the term commercial does not modify "soliciting contributions." The Federal regulations make clear that Federal reports cannot even be used for charitable solicitations.

The limitation in section 16(3) applies only to commercial activities. The common ordinary meaning of "commercial" indicates activity which is carried on for a profit. A dictionary definition of "commercial" provides in relevant part:

> "'Commercial' 1. of or connected with commerce or trade. 2. of or having to do with stores, office buildings, etc. . . . 4. a) made, done, or operating primarily for profit . . . . " Webster's New World Dictionary, Second College Edition. Simon and Schuster 1980.

Similarly, there is Michigan case law which construes the term "commercial activity" to include "any type of business or activity which is carried on for a profit" Lanski v Montealegre, 361 Mich 44 (1960).

This discussion leads to the conclusion that the prohibitions of section 16(3) apply to activities which are carried on for a profit. An organization which is not organized for the purpose of making a profit may, therefore, use lists of names gleaned from statements filed pursuant to the Act for solicitations it conducts. A nonprofit organization utilizing the list must confine its use to noncommercial purposes and may not sell or loan the data to another organization which intends to use the information in a commercial endeavor.

This letter is informational only and is not a declaratory ruling, since no actual statement of facts was presented.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation
(517) 373-8141

PTF/WB/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

May 19, 1986

Mr. Richard D. McLellan
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. McLellan,

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the campaign finance activities of a certain prospective nonprofit corporation.

You have indicated that the Organizing Committee of the National Alliance of Indo-American Citizens ("NAIAC") proposes to organize as a Michigan non-profit corporation which will operate as a tax-exempt civic league pursuant to section 501(c)(4) of the Internal Revenue Code.

You state:

> "[T]he proposed NAIAC articles of incorporation specifically provide that the corporation shall be a corporation 'formed for political purposes' as that term is used in the Michigan Campaign Finance Act."

You ask whether the NAIAC, if organized under the proposed articles of incorporation would be considered a corporation "formed for political purposes" as that term is used in section 54 of the Act (MCL 169.254). The latter provides (in part):

> "(2) An officer, director, stockholder, attorney, agent, or any other person acting for a corporation or joint stock company, whether incorporated under the law of this or any other state or foreign country, except corporations formed for political purposes, shall not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a).
>
> (3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution

> or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question." (Emphasis added.)

You state that the NAIAC "will operate as a tax-exempt civic league". You indicate the brokered entity will be:

> "[A] Michigan non-profit corporation which will act, in part, as a corporation formed for political purposes pursuant to Michigan's Campaign Finance Act." (Emphasis added.)

In a letter to you dated October 22, 1985, it was stated:

> "In order to be deemed a corporation 'formed for political purposes' under the Act, such corporations must be formed solely for political purposes and must be incorporated for liability purposes only, as shown not only by its articles of incorporation or by-laws, but also by the manner in which the corporate enterprise is conducted." (Emphasis added.)

An examination of the proposed articles of incorporation reveals that the NAIAC would be a multi-purpose corporation. Its Articles of Incorporation declare (in part):

"ARTICLE II

The purposes for which the corporation is organized are as follows:

1. To operate as a civic league and social welfare organization

* * * * *

4. To encourage Indo-Americans to contribute to the economic development of the United States and the improvement of the economic position of Indo-Americans by maximizing the utilization of economic rights and privileges available to Indo-Americans.

5. To assist Indo-Americans in their assimilation into the mainstream of the United States political, economic, educational, and social systems

* * * * *

7. To inititate and execute programs designed to bring about political, social, cultural and economic betterment of Indo-American citizens. . .

8. To lobby, as permitted by law, on behalf of Indo-American citizens and immigrants before the United States Congress and the various legislative bodies in the states and territories, as well as executive branches of the federal, state and local governments.

9. To establish a separate NAIAC Foundation as a non-profit educational and charitable organization which will include a public interest litigation program ... where such representation is not ordinarily provided by traditional private law firms.

10. As permitted by the laws of the various states, to receive contributions and make expenditures for political purposes; to establish, administer and solicit contributions to a political action committee; to perform any other acts of a political nature permitted by law and to operate as a corporation formed for political purposes.

11. To encourage coverage by the electronic media of the contributions to the United States of Indo-American citizens and immigrants." (Emphasis added.)

In order to be deemed "a corporation formed for political purposes" under the Act, two conditions must be met: (1) the organization must be incorporated for liability purposes only, and (2) the organization must be created solely to engage in political activities, i.e., the organization must be in its entirety a committee under the Act.

It is clear by examination of its proposed Articles of Incorporation that NAIAC would be a multi-purpose corporation, and its operation as a committee under the Act would be only one of those purposes. Therefore, the NAIAC would not be a corporation formed for political purposes under the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

official."

The Secretary of State promulgated rule 39(8), 1979 AC R169.39, which is intended to implement section 49(1) of the Act. The rule provides:

> "(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act."

In interpreting the relationship between a candidate committee and that candidate's officeholder expense fund (OEF) as controlled by section 49 of the Act and rule 39(8), the Secretary of State stated in the declaratory ruling to Ms. Wilbur:

> "While the officeholder expense fund may not contribute to the officeholder's candidate committee, the candidate committee may transfer funds into the officeholder expense fund.
>
> * * *
>
> [T]here is nothing to prohibit the Committee from transferring unlimited funds to the OEF.
>
> * * *
>
> It should be noted that transfers can go only from the candidate committee to the officeholder expense fund; they may not go the other direction because to do so would result in the officeholder expense fund making contributions or expenditures to further the nomination or election of the officeholder."

The declaratory ruling to Ms. Wilbur addressed the issue of a candidate committee's sale of its computer or the use of its computer to that candidate's OEF.

The Secretary of State declared,

> "The Committee may sell its assets for fair market value ... but ...the Committee may not sell the computer to the OEF."
>
> * * *
>
> The final issue raised with this assertion is whether the OEF may pay the Committee either the Committee's costs or fair market value for the computer services it receives. It would be improper for the OEF to purchase a service or asset from the Committee because that is not an arm's length transaction and the OEF could use that mechanism to transfer funds to the committee. The funds could then be used for campaigning by the Committee, resulting in a violation of section 49 by the OEF."

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> "While the officeholder expense fund may not contribute to the officeholder's candidate committee, the candidate committee may transfer funds into the officeholder expense fund.
>
> * * *
>
> [T]here is nothing to prohibit the Committee from transferring unlimited funds to the OEF.
>
> * * *
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>
> * * *
>
> The final issue raised with this assertion is whether the OEF may pay the Committee either the Committee's costs or fair market value for the computer services it receives. It would be improper for the OEF to purchase a service or asset from the Committee because that is not an arm's length transaction and the OEF could use that mechanism to transfer funds to the committee. The funds could then be used for campaigning by the Committee, resulting in a violation of section 49 by the OEF."

In a letter to Mr. Timothy Downs, dated March 21, 1978, it was stated:

> "Funds in an officeholder's expense fund may not be transferred to the same officeholder's candidate committee."

Under section 9(3) of the Act (MCL 169.209),

> "(3) "Loan" means a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation conditional or not, to repay in whole or part." (Emphasis added.)

Therefore, a "loan" is not just "a transfer of money", but "a transfer of money ...in exchange for an obligation conditional or not, to repay in whole or part." The answer to your first inquiry depends upon whether a candidate committee and that candidate's OEF may enter into a contractual agreement under the act for the loan and repayment of money.

The candidate committee and the OEF are separate accounts created for separate and mutually exclusive purposes but controlled by and for the same person. Since both accounts are controlled by and for the same person, a candidate committee and that candidate's OEF are incapable of entering into an arm's length transaction.

Money may be transferred between a candidate committee and that candidate's OEF only in conformity with rule 39(8), which allows only a one-way transfer of funds. Pursuant to rule 39(8), money may be transferred from the candidate's committee to the candidate's OEF, but money may not be transferred from the OEF to the committee. The rule contemplates that an intentional transfer of funds from the committee to the OEF is irrevocable and unconditional.

A loan is a transfer of money in exchange for an obligation to repay, and the repayment of that loan is also a transfer of money. If an OEF repays a loan made to it by its officeholder's candidate committee, then the OEF has made a transfer of its funds that is prohibited under the Act and rules.

Therefore, it is impermissible for a candidate committee to make a loan to that candidate's OEF.

Since a transfer of money from a candidate committee to the candidate's OEF in the form of a loan is impermissible, it is unnecessary to respond to your second question.

Your request for a declaratory ruling did not contain an actual statement of facts, as required by rule 6(1), 1979 AC R169.6. Therefore, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation
(517) 373-1841

4-86-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 18, 1986

Mr. Maurice Kelman
Professor of Law
Wayne State University
Detroit, Michigan 48202

Dear Mr. Kelman:

This is in response to your request for an interpretive statement concerning the provisions of the Campaign Finance Act (the Act), 1976 PA 388, as amended. Specifically, you ask whether an elected official may convert money held in an officeholder expense fund to personal use, either during the official's term of office or upon leaving office. You also ask what disposition can be made of surplus funds held in an officeholder account after the official leaves office or in the case of death while in office.

In order to respond to your questions, it is first necessary to review the campaign finance requirements imposed upon candidates for state and local elective office. Pursuant to section 21 of the Act (MCL 169.221), a person must form a candidate committee within 10 days after becoming a candidate. In addition to persons seeking office, "candidate" is defined by section 3(1) (MCL 169.203) to include elected officeholders. Consequently, an officeholder is required to maintain a candidate committee throughout his or her tenure in office.

Section 21(3) requires a candidate committee to establish a single official depository. The committee must deposit any contribution it receives into this account. Similarly, any expenditure made must be drawn from funds held in the official depository. Money flowing into and out of the committee's account must be reported in a series of campaign statements filed according to the schedule established by sections 33 and 35 of the Act (MCL 169.233 and 169.235).

As explained in a declaratory ruling to Senator Mitch Irwin, dated May 29, 1979, a candidate committee may only use its funds to further the nomination or election of the candidate, except as otherwise provided by the Act and rules. Upon leaving office, surplus funds held by the candidate committee must be disbursed as required by section 45 of the Act (MCL 169.245). This section states:

> "Sec. 45. (1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution

limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred.

(2) Unexpended funds in a campaign committee that are not eligible for transfer to another candidate committee of the person, pursuant to subsection (1), shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the campaign committee."

To summarize, a candidate for public office is required to finance his or her campaign entirely through an account held in a single official depository. Funds held in that account may only be used to further the candidate's campaign activities. Surplus funds may, in some circumstances, be transferred to another candidate committee held by the same individual. Otherwise, excess funds must be returned to the contributors of the funds, donated to a tax exempt charitable institution, or given to a political party upon dissolution of the candidate committee.

As noted previously, a successful candidate is not allowed to dissolve his or her candidate committee upon assuming public office. However, an officeholder may not tap funds held in the candidate committee account except to make expenditures to further the officeholder's presumed re-election effort. Recognizing this limitation, the legislature authorized an elected official to establish a separate account to be used for expenses incidental to the person's office. Specifically, section 49 of the Act (MCL 169.249) provides, in relevant part:

"Sec. 49. (1) An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official.

(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year."

Section 49(1) prohibits an official from using an officeholder expense fund (OEF) for campaign purposes. Therefore, funds held by the official's candidate committee and OEF must be kept in separate accounts, to be used for separate purposes. The only exception is found in rule 39(8) of the Department's administrative rules (1979 AC R169.39), which allows money to be transferred from an elected official's candidate committee to the official's OEF. There is no similar provision authorizing transfers from the OEF to the committee.

The only use of OEF funds authorized by the legislature is to defray expenses incidental to the holding of public office. While the statute fails to define "expenses incidental to office", it cannot seriously be argued that the phrase includes the conversion of funds to the personal use of the officeholder. It is therefore abundantly clear that an elected official is prohibited from using OEF funds for his or her personal benefit while in office. The issue raised by your inquiry is whether a different result should obtain when the official leaves office either before or after the term of office has expired.

In cases too numerous to mention, the courts have indicated that the primary rule of statutory construction is to discover and give effect to the legislative intent. A logical starting point is to look to the object of the statute and the evil which it is designed to remedy, and then to apply a reasonable construction which best accomplishes the statute's purpose. Erickson v Department of Social Services, 108 Mich App 473 (1981).

The Campaign Finance Act is a product of the reform movement whose genesis can be traced to the Watergate scandal. After the legislature's first attempt at campaign finance reform was struck down by the Michigan Supreme Court for technical reasons, Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich 123 (1976), the legislature swiftly reenacted the present statute. The legislative purpose is explained by the Act's history:

> "Michigan's elections are currently conducted according to Public Act 116 of 1954, an election law which 2 sessions of the legislature have agreed is too broad, vague, unenforceable, and generally inadequate. The first major revision of this election law, Public Act 272, was enacted in 1974 with an effective date of July 1, 1975. Before this law took effect, it was superseded by the passage of an even more comprehensive political reform bill, Public Act 227 of 1975. Before this law took effect, however, it was nullified by an advisory opinion of the Supreme Court on the grounds that the single bill violated the State Constitution by embracing more than 1 object.
>
> The concerns which prompted the legislature to enact 2 political reform bills still exist. They include a crisis of confidence in elected officials among voters today, and the growing influence of 'big money' in increasingly expensive political campaigns . . . ." Second Analysis of SB 1570 (12-17-76) at 1.

Other analyses prepared in connection with the various reform bills considered by the legislature suggest the Act was intended to reduce corruption and the appearance of corruption in Michigan elections, preserve electoral integrity, and restore citizen confidence in government.

It is difficult to imagine how these statutory objectives could be accomplished if the Act is construed to allow an officeholder to convert OEF funds to his or her personal use upon leaving office. Allowing officeholders to personally enrich themselves by diverting money donated for other purposes could certainly create the appearance of corruption and destroy citizen confidence in elected

officials. Persons who contribute funds to an OEF have the right to expect the contributions will be used as they were intended - to pay for expenses incidental to the holding of public office.

Moreover, construing the Act in this manner conflicts with the statutory prohibition against converting OEF funds to personal use while in office. The legislative intent expressed in section 49(1) would be seriously undermined if a public official, simply by retiring from office, is permitted to line his or her pockets with money which is not otherwise available for the official's personal use.

This interpretation would also allow an elected official to avoid the requirements of section 45 of the Act. As noted above, section 45 provides for the disbursement of unexpended funds held in an officeholder's candidate committee account. If the funds are not transferred to another candidate committee held by the same official, the money must be returned to its contributors, donated to a charitable institution, or given to a political party.

However, rule 39(8) creates a fourth possiblity - the funds could be transferred to the officeholder's OEF. If the officeholder is then allowed to convert the OEF account to his or her personal use, the candidate committee's surplus funds will have been disbursed in a manner which directly contravenes the requirements of section 45.

The only permissible use of OEF money is to pay for expenses incidental to the holding of public office. Personal enrichment is not an expense incidental to office. Therefore, it must be concluded that the Act prohibits an elected official from converting unexpended OEF funds to his or her personal use upon leaving office. Similarly, if an officeholder should die while in office, money held in an OEF cannot be considered part of the officeholder's personal estate.

The only persons authorized to establish OEF's are elected public officials. An official who leaves office has no authority to maintain an officeholder account. Thus, a public official must dissolve his or her OEF upon leaving office. The remaining issue presented by your inquiry is how to dispose of surplus funds held in the OEF upon death or retirement.

As you note, section 49 does not contain specific directions "of the kind contained in counterpart section 45 for campaign funds, spelling out what is to be done when the [officeholder expense] fund is terminated." However, since the Act does not allow the conversion of surplus funds to the officeholder's personal use, there must be a procedure for ridding the OEF of unspent money.

You suggest there are three acceptable disposition methods. First, the excess funds may be returned, pro rata, to the OEF's contributors. Second, the funds may be donated to a tax exempt charitable institution. And third, the balance may be donated to the State's general fund or to the treasury of the appropriate governmental unit. A fourth alternative, which you do not mention, would be to incorporate the disbursement methods prescribed by the legislature in section 45 of the Act into section 49.

In the absence of express legislative direction, it has been determined that questions concerning the disposition of surplus OEF funds should be addressed by the Attorney General. Therefore, Secretary of State Austin will ask the Attorney General for his opinion regarding the lawful disposition of surplus funds held in an officeholder account.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/AC/cw

1-86-CD

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN SECRETARY OF STATE

LANSING
MICHIGAN 48918

July 21, 1986

Mr. William J. Perrone
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. Perrone:

This is in response to your request for a declaratory ruling with respect to expenditures made for personal security by a gubernatorial candidate committee which is subject to the expenditure limit of section 67(1) of the Campaign Finance Act, 1976 PA 388, as amended (the Act).

The request is made on behalf of William Lucas, and the Lucas for Governor Committee (LFG), which has applied for and received public funds pursuant to section 64 of the Act (MCL 169.264). The relevant facts are set forth in your letter as follows:

> "5. In connection with his official position as Wayne County Executive, Lucas is provided with personal security services by the Wayne County Sheriff. In general, these expenses are paid for by the county. Certain incidental security expenses, however, e.g., meals and lodging for security officers, may be paid by LFG.
>
> 6. Security services provided for the Wayne County Executive include full time protection by Wayne County deputy sheriffs and use of vehicles with radio frequencies and telephones in order to provide emergency communications.
>
> 7. Security will be provided for the Wayne County Executive whether or not Lucas is a candidate for governor or any other office.
>
> 8. Security personnel are career police officers and not political appointees. The officers do not participate in political activities except insofar as they are present during political events and otherwise deal with political staff on scheduling and advance matters related to security."

The rulings you request are stated as follows:

> "1. Security services provided by Wayne County are not regulated by the Michigan Campaign Finance Act.
>
> 2. Payments made with monies other than those received from the state campaign fund for expenditures necessitated by security requirements for the Wayne County Executive shall not be included for purposes of determining whether the limit described in Section 67(1) of the Michigan Campaign Finance Act, MCLA 169.267(1), has been exceeded."

These requests present two distinct issues. The first is a correct statement of the law with respect to expenditures by governmental units. The Act provides a series of regulations and reporting requirements which apply to contributions and expenditures in connection with Michigan elections. The Attorney General of Michigan has on numerous occasions issued opinions stating the law with respect to electoral activity by governmental units. A copy of an opinion issued to Representative Emerson is enclosed for your information.
The second ruling requested deals with the application of rule 39a, 1982 AACS R 169.39a, to expenditures made by the Lucas for Governor Committee for personal security provided to the candidate. Rule 39a was promulgated in 1982 in response to requests made by persons who had participated in gubernatorial campaigns and departmental staff.

The specific provision with respect to expenditures for security services was included because the State Police require the candidate committee to reimburse the state for certain expenditures for gubernatorial security. These expenditures would typically be expenses billed to the governor's campaign by the Department of State Police. The portions of the expenditures not subject to the limit set by section 67(1) of the Act (MCL 169.267) are typically of the following types: 1) the difference between the salary of a trained State Police driver and the normal expenses of employing a non-trooper driver, and 2) the difference in cost between chartering a two engine airplane and a single engine plane. The candidate committee is required to pay the expenses and add the base expenditure to the amount subject to the expenditure limit in section 67(1).

Rule 39a only specifies that expenditures for security requirements established by the Director of State Police may be excluded from calculations of expenditures subject to the section 67(1) limit. However, the rule does indicate that the list of excludable expenditures is not all inclusive.

The language of the rule authorizes the Department of State to decide that other expenditures may be excluded from calculation of the limit. The second request asks that the same exclusion for certain security expenditures be made applicable to an incumbent Wayne County Executive.

An unpleasant reality of political life is the need for people in the public eye to take appropriate measures to safeguard themselves from the possibility of phy-

sical threats and attacks. Many governmental units have recognized the danger and have provided police protection for highly visible public officials. As your letter indicates the government of Wayne County has apparently found it necessary to provide security services for the County Executive. It is unclear from your letter whether the County charges the Lucas for Governor committee for the cost of these services when Mr. Lucas is engaged in political campaigning.

As previously indicated, the Department of State Police does charge the incumbent governor for security services provided while on campaign trips.

If similar charges are billed by Wayne County then rule 39a would permit such charges to be excluded from the section 67(1) expenditure limit in the same way they are excluded for an incumbent governor. The excluded amount includes only what is necessitated by the prescribed security requirements. Neither the Act nor the rule permits a campaign to exclude all monies paid for security. If a part of the expenditure would have been made in any case that part must be included in the amount subject to the limit. The examples cited previously illustrate this point.

If you need assistance in determining how specific expenditures are to be allocated you should contact the Campaign Finance Reporting Section of the Elections Division.

This letter is a declaratory ruling with respect to the treatment of expenditures for personal security of candidate William Lucas by the Lucas for Governor Committee.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/v

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

MAY 26 1982

Honorable Bob Emerson
State Representative
The Capitol
Lansing, Michigan

Dear Representative Emerson:

You have requested my opinion on four questions concerning downtown development authorities, the first of which may be stated as follows:

> 1. May a downtown development authority expend public funds for an advertising campaign which advocates a position on a ballot question?

The Flint Downtown Development Authority was established by a city ordinance pursuant to 1975 PA 197; MCLA 125 et seq; MSA 5.3010(1) et seq. At the July 6, 1982 meeting of the Downtown Development Authority Board, a resolution was adopted authorizing the expenditure of up to $5,000 of the Authority's funds for the purpose of advocating a favorable vote on a neighborhood foot patrol millage. The Downtown Development Authority established a separate account consisting of $5,000 in public funds and a $2,500 check from a private contributor. Disbursements from this account totaled $7,341.38 and were made primarily to finance the cost of radio and newspaper advertisments advocating a favorable vote upon the passage of a 2 mill property tax levy to fund the city-wide foot patrol program. Flint voters approved the millage on August 10, 1982.

Your letter mentions OAG, 1981-1982, No 5882, p 137 (April 22, 1982), which concluded that the Michigan Municipal League, a private nonprofit organization funded primarily by public entities, may expend its funds in connection with the passage or defeat of ballot questions. Your letter suggests that said opinion may conflict with other opinions of this office which have concluded that an expenditure of public funds to urge the passage of, or defeat of, a ballot question is improper.

Previous opinions of this office have concluded that in the absence of some constitutional or statutory authority, public bodies may not spend tax monies to influence the outcome of elections. It has been held that: a school board may not expend public funds urging a favorable vote on ballot proposals to increase tax limitations and permit the issuance of bonds, OAG, 1965-1966, No 4291, p 1 (January 4, 1965); a county board of supervisors is not authorized to spend county funds to print and distribute materials advocating a favorable vote on the issue of constructing a new county building, OAG, 1965-1966, No 4421, p 36 (March 15, 1965); and state commissions and boards may not expend public funds to urge the electorate to support or oppose a particular candidate or ballot proposal, OAG, 1979-1980, No 5597, p 482 (November 28, 1979).

In Mosier v Wayne County Board of Auditors, 395 Mich 27; 294 NW 85 (1940), the Michigan Supreme Court upheld a taxpayer action to restrain the Wayne County Board of Auditors from spending county money for the ultimate purpose of placing a proposed constitutional amendment on the ballot regarding legislative apportionment, holding, inter alia:

> "The matter of representation in the legislature does not have enough relation to the property and business of the county to require a holding that the action of the board of supervisors in the instant case was within its constitutional and statutory power. If appellees are right in their contention, then by the same token any or all of the other counties of the state might with equal propriety appropriate any sum of money considered proper from the

> public funds of the county to finance a counteractivity. And further, such expenditure of county funds might be contrary to the desire and even subject to the disapproval of a large portion of the county taxpayers who were firmly of the conviction that refusal to reapportion representation in Michigan in accord with constitutional mandate is decidedly detrimental to our general governmental welfare. And we think it can safely be said that it was never contemplated under the Constitution and statutes of this State that our boards of supervisors should function as propaganda bureaus." [295 Mich at p 31.]

OAG, 1981-1982, No 5882, supra, which states that the Michigan Municipal League may expend its funds in connection with the passage or defeat of a ballot question is not inconsistent with the opinions mentioned above. Rather, the opinion reflects the Michigan Supreme Court's decision in Hays v City of Kalamazoo, 316 Mich 443, 458; 25 NW2d 787 (1947), where the expenditure of public funds by cities and villages for membership in the Michigan Municipal League was upheld. There, the court found the expenditures to be permissible primarily because of the broad authority of cities and villages pursuant to the "home rule" provision of the Michigan Constitution of 1908 and the services rendered by such private nonprofit organization to the member cities and villages.

Although Michigan appellate courts have not had occasion to construe the statutory powers of downtown development authorities, it would appear that such authorities, like other legislatively created instrumentalities of municipal corporations, are created solely for the execution of specified and restricted purposes. Huron-Clinton Metropolitan Authority v Boards of Supervisors of Five Counties, 300 Mich 1; 1 NW2d 430 (1942). As a general rule, municipal corporations possess and may exercise only such powers as are expressly granted by the Legislature or fairly implied from the powers expressly conferred. Bowler v Nagel, 228 Mich 434; 200 NW 258; 37 ALR 1154 (1924).

In order to address your first question, it is necessary to examine 1975 PA 197, supra, in order to determine whether it may be said that the Legislature has vested downtown development authorities with the power to spend public monies in connection with a ballot proposal regarding public safety in the city where the authority is located.

Section 7 of 1975 PA 197, supra, which enumerates the powers that a downtown development governing board may exercise, states:

> "The board may:
>
> "(a) Prepare an analysis of economic changes taking place in the downtown district.
>
> "(b) Study and analyze the impact of metropolitan growth upon the downtown district.
>
> "(c) Plan and propose the construction, the renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple-family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the economic growth of the downtown district.
>
> "(d) Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, designed to halt the deterioration of property values in the downtown district and to promote the economic growth of the downtown district, and take such steps as may be necessary to persuade property owners to implement the plans to the fullest extent possible.
>
> "(e) Implement any plan of development in the downtown district necessary to

achieve the purposes of this act, in accordance with the powers of the authority as granted by this act.

"(f) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.

"(g) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority deems proper or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests therein, which the authority determines is reasonably necessary to achieve the purposes of this act, and to grant or acquire licenses, easements, and options with respect thereto.

"(h) Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances thereto, within the downtown district for the use, in whole or in part, of any public or private person or corporation, or a combination thereof.

"(i) Fix, charge, and collect fees, rents and charges for the use of any building or property under its control or any part thereof, or facility therein, and pledge the fees, rents and charges for the payment of revenue bonds issued by the authority.

"(j) Lease any building or property under its control, or any part thereof.

> "(k) Accept grants and donations of property, labor, or other things of value from a public or private source.
>
> "(l) Acquire and construct public facilities."

An authority may also engage in certain general activities which may be summarized as follows:

> Levy an ad valorem tax which is collected by the municipal treasurer and credited to the general fund of the downtown development authority (subject to approval by the municipal body);[1]
>
> Derive funds under a tax increment financing plan to be used for a public purpose specified in the plan;[2]
>
> Enter into an agreement with the county board of commissioners, school boards and the governing body of the municipality to share a portion of the tax increment proceeds;[3]
>
> Borrow money and issue negotiable revenue bonds deemed to be a debt of the municipality;[4]
>
> Sell general obligation bonds subject to the municipality's approval.[5]

---

[1] 1975 PA 197, supra, § 12.

[2] 1975 PA 197, supra, § 15.

[3] 1975 PA 197, supra, § 14.

[4] 1975 PA 197, supra, § 13.

[5] 1975 PA 197, supra, § 16.

Although it may be concluded that a downtown development authority has such general authority as would enable it to become involved in matters of safety in the downtown development district locality, such authority falls short of enabling it to expend public funds to influence the outcome of an election.

In answer to your first question, it is my opinion that a downtown development authority may not expend public funds for an advertising campaign which advocates a position on a ballot question.

Your remaining questions are predicated upon the applicability of the Campaign Finance Act, 1976 PA 388; MCLA 169.201 et seq; MSA 4.1703(1) et seq, to public bodies such as a downtown development authority:

> 2. May a downtown development authority form a committee under the provisions of the Campaign Finance Act for the purpose of expending funds to influence the outcome of an election?
>
> 3. If a downtown development authority cannot expend public funds to advocate a position on a ballot question, must a campaign statement and report required by 1976 PA 388 be filed?
>
> 4. If a downtown development authority cannot expend public funds to advocate a position on the ballot, must the committee receiving the contribution be advised that the contribution is improper by the filing official?

Since your second and third questions are interrelated, they will be considered together.

A fundamental rule of statutory construction is that neither the State, its agencies nor political subdivisions are within the purview of a statute unless an intention to include them is clear. 1 OAG, 1955-1956, No 2242, p 692 (December 1, 1955).

Before a downtown development authority would be able to undertake the formation of a committee, it would first

have to possess the power to do so under its grant of authority. Review of the various provisions of the downtown development authority statute does not reveal any express or implied authority for a downtown development authority to form a committee for the purpose of expending public funds to influence an election.

In response to your second and third questions, it is my opinion that a downtown development authority may not form a committee under 1976 PA 388, supra. It follows that the provisions of 1976 PA 388, supra, are not applicable to a downtown development authority.

In view of my answers to your first three questions, your fourth question is moot.

FRANK J. KELLEY
Attorney General

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 23, 1986

Honorable John D. Cherry, Jr.
State Representative
309 W. Johnson Street
Clio, MI 48420

Dear Representative Cherry:

This is in response to your inquiry concerning the reporting requirements of the Campaign Finance Act (the Act), 1976 PA 388, as amended. The facts giving rise to your inquiry are as follows:

> "My candidate committee for State Representative sponsors an annual fundraising event. This event is scheduled nearly a year in advance of its actual date. During the course of the year, we pre-pay some of the expenses of the event, e.g. hall deposit, entertainment deposit, ticket printing.
>
> Subsequent to the payment of those expenses, I declared my candidacy for a State Senate seat. Donations made by individuals attending the event will be deposited by my State Senate candidate committee for use in the State Senate campaign."

You ask how your candidate committees should report expenditures and contributions made in connection with this fund raiser.

The reporting requirements for fund raising events are set out in section 26(g) of the Act (MCL 169.226). This section states:

> "Sec. 26. A campaign statement of a committee, other than a political party committee, required by this act shall contain the following information:
>
> (g) The total amount of contributions of $20.00 or less received during the period covered by the campaign statement for each fund raising event held during that period. The following information regarding each fund raising event shall be included in the report:
>
> (i) The type of event, date held, address and name, if any, of the place where the activity was held, and approximate number of indivi-

duals participating or in attendance.

(ii) The full name of each person who, through making a contribution or expenditure in connection with the event, made a total contribution of $20.01 or more, and the total of all such contributions. This requirement is in addition to, and not in lieu of, the requirements of this section relating to the recording and reporting of contributions.

(iii) Moneys received in connection with the event or activity from persons in amounts of $20.00 or less shall be listed by general category such as tickets, beverages, bumper stickers, or other, and the total of those contributions shall be recorded.

(iv) The gross receipts of the fund raising event.

(v) The expenditures incident to the event."

Ordinarily, expenses for a fund raising event are paid by a single candidate committee and reported in one campaign statement. Indeed, section 44 of the Act (MCL 169.244) prohibits one candidate committee from making such expenditures on behalf of another candidate committee. However, there is nothing in section 44 which prohibits a State Representative from pre-paying certain expenses for an annual fund raising event from his or her State Representative candidate committee. The subsequent formation of a Senate candidate committee does not transform expenditures previously made by the State Representative committee into contributions to the new account.

In these circumstances, the State Representative candidate committee should report expenses it paid for the fund raiser prior to the organization of the State Senate committee. Expenditures of more than $50.00 should be itemized on schedule 1B of the campaign statement filed for the reporting period in question, and expenditures of $50.00 or less should be reported on schedule 1D. The State Representative committee need not file a fund raiser report (schedule 1F). However, the campaign statement should clearly indicate the expenditures were for a fund raising event held to benefit the State Senate candidate committee.

The Senate committee is required to report any debts it assumed and expenditures it made in connection with the fund raising event after the committee was formed. These items should be reported on schedules 1B, 1D and 1E of the campaign statement covering the reporting period.

In addition, the Senate committee must complete a fund raiser schedule 1F disclosing in item 13 the total cost of the event, including the expenses paid by the State Representative committee. In the lower right hand corner of this schedule, you should state the portion of the total cost paid by the State Representative committee and incorporate by reference the campaign statement in which these expenses are itemized. (You may wish to attach the appropriate pages of the State Representative committee's statement). The Senate committee should also report all receipts from the fund raiser by completing schedules 1A

and 1F of the campaign statement.

It must be emphasized that this response is limited to the facts provided. The following factors are stressed: 1) the candidate paid the expenses at a time when the race for the Senate was not contemplated; 2) the eventual office the candidate is running for is an office with a higher contribution limit, thus section 45(1) (MCL 169.2457) is applicable. (Section 45(1) permits the transfer of unexpended funds from a State Representative candidate committee to a Senate candidate committee if the committees are simultaneously held by the same person. If the candidate were a local officeholder who decided to run for a state elective office information provided in this response would not apply); 3) the same principles would not apply to any officeholder who ran for governor and applied for public funding of the campaign.

This response is informational only and does not constitute a declaratory ruling. If you have further questions regarding this matter, please contact Glorietta Flakes, Supervisor, Disclosure and Public Records Section, at 373-8558.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/AC/cw

6-86-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 7, 1986

Senator John M. Engler
Senate Majority Leader
The Senate, 35th District
State of Michigan
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your letter of September 9, 1986, requesting a declaratory ruling pursuant to the Campaign Finance Act, 1976 PA 388, as amended (the "Act").

The issues presented in your letter focus on the treatment of expenses incurred by candidates for participation in "non-election meetings and forums to discuss pending legislation". You set forth a series of "facts" which form the basis for your request as follows:

> "1. Governor Blanchard has announced plans to make public appearances in selected state senate districts to encourage voters to support his position on pending legislative matters.
>
> 2. Governor Blanchard is a candidate for re-election as Governor and in exchange for $750,000 in taxpayer funds, has agreed to limit the expenditures of his candidate committee, Blanchard for Governor, to $1 million during the 1986 general election campaign.
>
> 3. Other candidates for public office who are regulated by the Act are equally concerned with pending legislative issues and are frequently invited to participate in or arrange on their own public forums to present their views regarding pending legislation. As the Senate Majority Leader, I am invited to participate in public meetings throughout the state to discuss pending legislation.
>
> 4. While participating in a public forum regarding pending legislation, the Governor and other candidates may be asked questions about campaign issues or other election matters. In addition, candidates participating in legislative meetings and forums may be greeted by their campaign supporters who voluntarily appear at such public meetings.
>
> 5. I am an interested person whose course of action would be affected by a Declaratory Ruling regarding the applicability of the Act to participation by candidates in non-election meetings and forums to discuss pending legislation."

These "facts" are general statements that do not describe the meetings, identify sponsorship or specify who is invited. Also, no information is given with respect to presentations which will be made. Materials publicizing the proposed events are not supplied, nor are the types of expenses in question identified.

The administrative rules promulgated to implement the Act include 1979 AC R169.6, which establishes the requirements for declaratory rulings pursuant to the Act:

> "Rule 6. (1) The secretary of state, on written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual statement of facts. An interested person is a person whose course of action would be affected by the declaratory ruling. A brief or other reference to legal authorities, upon which the person relies for determination of the applicability of the act or of a rule to the statement of facts, may be submitted with the request.
>
> (2) If the secretary of state decides to issue a declaratory ruling, the person requesting it shall be furnished with a statement to that effect. The statement shall set forth the time in which the ruling shall be issued.
>
> (3) The secretary of state may refuse to issue a declaratory ruling if the request is anonymous, or it is determined the subject matter is frivolous on its face, indefinite, or lacks specificity. If the secretary of state refuses to issue a declaratory ruling, the person making the request, if known, shall be notified of the reason for the refusal.
>
> (4) A ruling shall include the statements of facts, the legal authority, if any, and the rationale on which the secretary of state relies for the ruling, and the determination." (Emphasis supplied)

In view of the rule, a declaratory ruling may not be issued in response to your request due to your failure to provide any specific facts. Your letter is so general that it permits only the following similarly general analysis, which is offered in an effort to be helpful by directing you to some previous interpretations and rulings which may be of assistance.

The Act requires candidates for office to keep records and file reports of contributions received and expenditures made regardless of when the activity occurs. When one reporting period ends, another begins. Individuals become candidates pursuant to the Act when they meet the criteria of section 3(1) of the Act (MCL 169.203):

> "Sec. 3. (1) 'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective

office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only.

For purposes of sections 61 to 71, 'candidate' only means in a primary election, a candidate for the office of governor; and in a general election, a candidate for the office of governor or lieutenant governor of the same political party in a general election shall be considered as 1 candidate."

As you point out, officials like you, because of your incumbency, may often be involved in meetings and forums to consider legislative or administrative issues. The Act is limited to reporting and regulation of "contributions" and "expenditures" which are defined in detail in sections 4 and 6 of the Act (MCL 169.204 and 169.206). Section 6(3)(c) includes language which creates an exception to the definition of expenditure which provides in pertinent part:

"(3) Expenditure does not include:

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference.....".

As a general rule, noncampaign related activity is not covered by the Act unless there is an intent to influence voters. What constitutes noncampaign related activity depends on the facts pertaining to the activity.

Although the Department does not appear to have addressed previously "non-election meetings and forums to discuss pending legislation", there have been several interpretations in related areas. In a declaratory ruling to Richard D. McLellan, dated August 21, 1979, the Department ruled expenditures made to influence a political convention in which no candidates are nominated are not subject to the reporting requirements of the Act. In a letter to James DeSana, dated April 24, 1981, the Department stated the purchase of advertising in a testimonial book for a member of Congress which advocates the reelection of a state officeholder making the purchase is an "expenditure" which must be made from the officeholder's candidate committee. In a letter to Jack Bailey, dated December 2, 1981, it was indicated a radio program hosted by an elected public official does not constitute an "expenditure" by the radio station, nor by the commercial sponsors of the program, provided that the content of the program does not "support or oppose a ballot issue or candidate by name or clear inference," including the host candidate.

Several previous interpretations relating to activities of political parties may be helpful. An interpretative statement to Philip Van Dam, dated April 12, 1982, said a disbursement made by a political party committee to influence the Apportionment Commission, the Supreme Court, or other body with respect to apportionment, where permissible, is not an expenditure, and is not subject to the Act. In another letter to Philip Van Dam, dated October 31, 1984, the Department stated that if newsletters, organizational materials, campaign materials, campaign manuals, fundraising manuals and other communications published and distributed by a political party do not support or oppose a candidate or ballot issue by name or clear inference, then funds expended for producing and distributing these communications are not expenditures under the Act and are not reportable. The same letter analyzed a comprehensive series of political party activities and offered counsel concerning whether funds contributed and expended in support of these activities were reportable under the Act. A letter to David A. Lambert, dated October 31, 1984, set forth an analysis of similar political party activities.

Your attention is also directed to review interpretations issued by the Department concerning corporate participation in political activity. In a Letter to Elwin Skiles, Jr., dated January 22, 1982, the Department stated a corporation which permits candidates to visit the company's plants is not making a corporate contribution, provided that the visits are equally available to all candidates for a particular office, and there is no communication by the corporation in support of or in opposition to a candidate. A declaratory ruling to Art Kelsey, dated August 21, 1979 said equipment furnished to a candidate for non-election purposes may not be used for campaign purposes. A letter to David A. Lambert, dated September 21, 1983, indicated a corporation may purchase advertising in a program book, ad book, or newsletter published by a political party committee only if it does not support or give assistance to a candidate.

The Federal Election Commission (the "FEC") has previously dealt with the general issue your letter addresses. These pronouncements have been issued in the form of regulations and advisory opinions. Regulations of the FEC include provisions which specifically deal with the allocation of expenses for travel which combines campaign related activity with noncampaign appearances. The regulations are found at 11 CFR 106.3 for candidates other than presidential and vice-presidential candidates participating in public financing of their campaign. Similar regulations for these candidates are found at 11 CFR 9004.7. Copies of these regulations are enclosed for your edification.

In addition, the FEC has issued advisory opinions which provide a framework for distinquishing activities which are noncampaign related from those activites which are covered by the Federal Election Campaign Act (the "FECA"). In AO 1978-4 the FEC concluded that a testimonial for an incumbent congressman was not covered by the FECA even though it was held during a election year in his congressional district. Likewise, AO 1981-26 concludes, for similar reasons, that a birthday party for a member of Congress was not covered by the FECA provided it was conducted in a particular fashion. Copies of these advisory opinions are also enclosed. (It should be noted, in passing, that these activities may have implications under Michigan's Lobby Law.)

No rules have been promulgated in Michigan which parallel the federal regulations and no previous written requests have been made of this Department which would prompt the kind of guidance provided in AO 1978-4. While the cited opinions of the FEC are not binding on persons participating in state or local elections, they do provide a reference which may be useful in examining a set of facts in order to ascertain what, if any, expenditures are to be reported under the Act. This agency has relied previously on FEC interpretations in the formulation of its rulings and interpretations.

Hopefully, this reply which is informational only and does not constitute a declaratory ruling, will nonetheless provide some assistance in determining when expenditures are to be reported. In the event you still require a declaratory ruling, please provide "facts" which are specific and which pertain to your particular office and candidacy, not to that of another individual. Any statement of facts must elaborate upon your reference to "non-election meetings and forums to discuss pending legislation".

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

Enclosures

[¶5292] AO 1978-3: Christmas Gifts as Campaign Expenditure

[A campaign committee may reimburse the candidate for the expense of Christmas gifts. Answer to Representative Gillespie V. Montgomery.]

This refers to your letter of January 23, 1978 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed reimbursement to you by your principal campaign committee for your purchase of Christmas gifts in 1977.

Your letter explains that last fall you spent $504 to purchase 72 Christmas gifts which you gave to individuals and firms, including media representatives, with whom you have worked closely in carrying out your responsibilities as Representative of the Third Congressional District of Mississippi. You believe that the cost of these items represents a legitimate campaign expenditure and state that no advocacy of your election or solicitation of funds accompanied the gifts. You request an opinion as to whether your principal campaign committee may now reimburse you for the amount ($504) which you paid to purchase the gifts.

The Commission has stated in past advisory opinions that candidates and their principal campaign committees have broad discretion under the Act in deciding which expenditures will best serve their candidacies. See Advisory Opinions 1977-11 and 1977-60, copies enclosed. Accordingly, the Commission concludes that the cost of the Christmas gifts may be regarded as an expenditure of your committee and may be reimbursed to you.

The payment to you from your committee should be reported by the committee as an expenditure to the person or business from whom you purchased the Christmas gifts. This disclosure is required by 2 U.S.C. §434(b)(9) and the Commission's regulations at 11 CFR 104.2(b)(9). Those sections state that when an expenditure exceeding $100 is made by or on behalf of a political committee or candidate the name and address of the person to whom the expenditure is made as well as the amount, date, and particulars of the expenditure must be reported. Your committee should note on its reports, however, that actual disbursement was made to you personally as reimbursement for an expense you paid on behalf of the committee. You would also need to provide your committee with a receipted bill from the vendor or, if a receipted bill is not available, your cancelled check showing payment of the bill plus the bill, invoice or contemporaneous memorandum of the transaction supplied by the person who sold you the gifts. See 2 U.S.C. §432(d) and 11 CFR 102.9(c).

The Commission may express no opinion on the possible application of Rules of the House of Representatives to the proposed reimbursement since they are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of a general rule of law as stated in the Act or prescribed as a Commission regulation to the specific factual situation set forth in your report. See 2 U.S.C. §437f.

Dated: February 21, 1978.

[¶5293] AO 1978-4: Committee Conducting Non-Profit Testimonial

[A committee organizing a non-profit, non-partisan testimonial to a Congressman does not have to register with the Commission. Answer to Dwight Patterson and Clara B. Emmett, Co-Chairmen, John J. Rhodes Commemorative Committee, P. O. Box "C", Mesa, Arizona 85201.]

This refers to your letter of January 10, 1978, asking whether the John Rhodes Commemorative Committee ("the Committee") is required to register, report, and otherwise conduct its activities as a "political committee" under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

Your letter explains that the Committee has been organized by a large group of people in Arizona to sponsor a banquet "honoring Congressman John Rhodes on his completion of 25 years as the Congressman from Congressional District One." Tickets will be sold in amounts "just enough to cover the expenses" of the event which you characterize as a "non-profit, non-partisan salute to our Congressman." The dinner is scheduled for March 3 in Mesa, Arizona. Your letter also states that neither Mr. Rhodes nor his campaign committee will "accrue any financial benefit" from the dinner, but you do anticipate that some type of silver momento will be given to Mr. and Mrs. Rhodes as a remembrance of this 25th anniversary of his congressional service.

The Commission concludes that ticket sales for the banquet and expenses incident thereto would not be contributions and expenditures under the Act and thus would not require the Committee to register and report as a "political committee." This conclusion is based on the representations in your letter that the event is designed and held only as a "non-profit, non-partisan salute" to Mr. Rhodes and not for the purpose of influencing his nomination or election to Federal office. The Commission regards the event you describe as a bona fide testimonial event rather than a campaign event so long as (i) no political contributions are solicited, made, or received by any person in conjunction with the event and (ii) the event does not involve any communication addressed to the attendees as a group which expressly advocates Mr. Rhodes' nomination or election to Federal office or the defeat of any other Federal candidate.

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act or prescribed as a Commission regulation to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Dated: February 24, 1978.

DISSENTING OPINION OF COMMISSIONERS HARRIS AND STAEBLER TO ADVISORY OPINION 1978-4

While the question is not free from doubt, we think the conclusion reached by the Commission is erroneous.

Congressman Rhodes is a candidate for re-election. The testimonial banquet is being held in an election year. It is being held in Congressman Rhodes' Congressional district. Undoubtedly, many voters will attend.

Men are held to intend the probable consequences of their acts, and the testimonial banquet will inevitably have some effect upon the election. Hence, we conclude that ticket purchases to fund the banquet are "contributions" under the definition in the Federal Election Campaign Act.

[¶5296] AO 1977-53: Foreign Trade Association

[A foreign trade association consisting of foreign chambers of commerce cannot form a political action committee. Answer to Thomas H. McGowan of Kirkwood, Kaplan, Russin and Vecchi, 1218 Sixteenth Street, N. W., Washington, D. C. 20036.]

This responds to letters dated September 26 and November 16, 1977 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and relevant regulations of the Commission to the proposal of the Asia-Pacific Council of American Chambers of Commerce (APCAC) to establish a political committee.

An advisory opinion is requested to confirm three assertions:

"1. APCAC . . . is a federation of trade associations as defined in Section 114.8(g) of the Commission's regulations.

"2. APCAC may solicit from U.S. citizens who are managerial level employees, officers, directors or shareholders of the member companies of . . . AmChams . . . and their families.

When an executive employee who has designated funds for an individual account in HALLPAC-Missouri or HALLPAC-Kansas, authorizes a transfer of funds from the individual account to HALLPAC-Federal, a "political committee" under the Act, a contribution from the employee to HALLPAC-Federal would result. Such a contribution would be subject to an aggregate limit of $5,000 per calendar year. 2 U.S.C. §441a(a)(1)(C); 11 CFR 110.1(c). When an employee-authorized disbursement is made from funds in his/her individual account in HALLPAC-Federal to a candidate for Federal office designated by the employee, a contribution by the employee to that candidate would occur. This contribution would be subject to an aggregate limit of $1,000 per election with respect to that candidate. 2 U.S.C. §441a(a)(1)(A); 11 CFR 110.1(a).

With regard to reporting obligations, the Commission's regulations provide that HALLPAC-Federal, as a conduit or intermediary of a designated contribution, shall report certain information including the original contributor and intended recipient of the contribution. 11 CFR 110.6(c). Commission regulations at 11 CFR 110.6(d) provide that if a conduit or intermediary exercises any direction or control over the choice of the recipient candidate of an earmarked contribution, a contribution by both the employee and the conduit results and must be reported accordingly. Since this request presents no factual information regarding the making of these earmarked contributions, this opinion does not reach the issue of whether HALLPAC-Federal exercises "direction or control over the choice of the recipient candidate" and thus, whether earmarked contributions in this situation are contributions from HALLPAC-Federal to the designated candidate. See the Commission's response to Advisory Opinion Request 1976-92 [¶6051], copy enclosed.

Based on the specific factual situation presented by your request, the Commission concludes that the proposed transfer of funds from an individual account in either HALLPAC-Missouri and HALLPAC-Kansas into an individual account in HALLPAC-Federal for the purpose of making a contribution to a candidate for Federal office is not prohibited by the Act provided the limitations, prohibitions and reporting provisions of the Act are observed.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Dated: June 4, 1981.

a/ HALLPAC's Articles of Operation, Article III, dealing with membership, indicates that the Executive Committee is empowered to solicit "qualified management and administrative employees of Hallmark Cards, Inc. for membership" but that an employee who expresses a desire to "be a member of HALLPAC... will be extended an invitation." The Commission notes that its regulations at 11 CFR 114.5(j) in conjunction with 11 CFR 114.5(g), permit a separate segregated fund to accept contributions from persons not within the solicitable class of executive and administrative employees of the corporation but it is not permitted to solicit voluntary contributions from such persons except under the twice yearly provisions of 11 CFR 114.6.

[¶5612] AO 1981-26: Party for Member of Congress

[A person giving a party for a member of Congress does not have any reporting obligations where the Congressman is not an announced candidate and the party is not a fundraiser. Answer to Representative Charles E. Bennett.]

This responds to your letter of May 19, 1981, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a party to be hosted on your behalf.

According to your request, a friend of yours would like to host a party for you in the "near future." He will pay all the expenses, and the party is primarily to introduce you to his friends and neighbors in Jacksonville, Florida, which is within your congressional district. You explain that this party is not a fundraiser nor is it "motivated for reelecting" you, but rather is purely a social event given by a friend.

This statement the Commission takes to mean that there will be no advocacy of your reelection in connection with the event. You further state that you are not an announced candidate nor do you expect any opposition in the next election. In light of the situation you ask whether or not there is any reporting obligation regarding the costs of the party to your host.

Given the stated facts and the Commission's understanding of them, as well as the most recent report filed by your 1980 campaign committee, the Commission concludes that no reporting obligation is incurred for the costs connected with this party.

You state that you are not an announced candidate for election. Additionally, it appears that you have not filed a statement of candidacy for the 1982 election, nor do you have a campaign committee for the 1982 election registered with the Commission. Reports filed for the Committee to Re-elect Charles E. Bennett ("the Committee") indicate that this Committee was established as your principal campaign committee for the 1980 election. Although the Committee has not terminated, as of the latest report filed January 31, 1981, the financial activity of the Committee relates only to the 1980 election.

In light of this information, under the Act and Commission regulations, specifically 2 U.S.C. §431 and 11 CFR 100.3, you are not now a candidate for any Federal office. Both 2 U.S.C. §431(2) and 11 CFR 100.3(a) establish a $5,000 threshold of contributions or expenditures to trigger candidate status, although they do not require the making of a public announcement. Moreover, 11 CFR 100.3(b) states that for purposes of determining whether an individual is a candidate, contributions or expenditures shall be aggregated on an election cycle basis. From Committee reports filed as of January 31, 1981, it appears that neither contributions nor expenditures related to any Federal election other than the 1980 election have occurred. Thus, since the information shown on your January 31 report does not indicate that you are a candidate for a 1982 election, and since the proposed activity is neither a campaign fundraiser nor, according to you, to influence your election, the Commission concludes that no reporting obligation is incurred regarding the expenses of the party. This result also follows from Advisory Opinion 1978-4 [¶5293], copy enclosed. The Commission there concluded that a testimonial event to honor the service of an incumbent member of Congress was a bona fide testimonial rather than a campaign event and so was not subject to the Act so long as (i) no political contributions are solicited, made or received by any person in conjunction with the event and (ii) the event does not involve any communications addressed to the attendees as a group which expressly advocates the incumbent's nomination or election to Federal office or the defeat of any other candidate.

The Commission notes that it expresses no opinion regarding possible application of House rules to the proposed activity since those rules are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Dated: June 26, 1981.

[¶5613] AO 1981-23: Solicitation by Agricultural Cooperative's PAC

[The political action committee of an agricultural cooperative may not solicit individual members of incorporated cooperatives that are members of the sponsoring cooperative. Answer to Richard H. Magnuson, Vice President/General Counsel, Land O'Lakes, Inc., P. O. Box 116, Minneapolis, Minnesota 55440.]

This responds to your letter of May 1, 1981, with attachments, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation by Land O'Lakes of contributions to its separate segregated fund from individual members of the member associations of Land O'Lakes.

percentage in accordance with paragraph (e) of this section.

(d) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under paragraph (c)(5) of this section, such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

§ *106.3 Allocation of expenses between campaign and noncampaign related travel.* [¶ 803]

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who receive federal funds pursuant to 11 CFR Part 9005 or 9036. [See 11 CFR 9004.7 and 9034.7] All expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported.

(b) (1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c) (1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to "each candidate" shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, D. C. and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by the candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding (b) and (c) above, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and non-campaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) above.

qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation Expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

[¶ 1145]

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

[¶ 1146]

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1), except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

[¶ 1147]

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

[¶ 1148]

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 900.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

7-86-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 22, 1986

Senator John M. Engler
Senate Majority Leader
The State Senate
State of Michigan
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your request for an interpretation of the Campaign Finance Act, 1976 PA 388, as amended (the Act), with respect to joint fundraiser participation by committees.

Since the Act first went into effect a number of questions have been submitted to the Department regarding whether committees may operate joint fundraising events and what procedures may be utilized in carrying out these plans.

The Department has consistently advised that the Act does not specifically prohibit joint fundraising events. The written responses were issued to help committees avoid violating the Act. Enclosed is a recent issue of the "Campaign Finance Reporter" which summarizes these responses in an article on "Joint Fundraisers."

As you know there are a number of specific violations of the Act which could occur in the context of a joint fundraising event. The most obvious of these are listed below:

> Contributions received by a committee cannot be commingled with the funds of another person, section 21(8). (MCL 169.221)
>
> Candidate committees are prohibited from making expenditures or contributions on behalf of another candidate committee, section 44(2). (MCL 169.244)
>
> Corporate contributions or expenditures on behalf of candidates are prohibited, section 54. (MCL 169.254)

The letters and articles applying the Act to joint efforts by committees have considered many of the "fact" situations presented by your letter. The Department's previous declaratory rulings and interpretative statements have

already been supplied to your office. If you wish to obtain additional copies of any of the previous letters on the subject of joint committee activity please contact the Elections Division. The declaratory rulings and interpretative statements are listed below:

> Michael W. Hutson - 9/20/78 - sets forth steps to be taken in operating joint fundraiser to avoid possible violations of the Act.
>
> Robert J. Kauflin - 8/6/80 - contributions over $20.00 to purchase joint fundraiser ticket must be made by written instrument pursuant to section 41 of the Act. (MCL 169.241)
>
> Wayne M. Deering - 8/6/80 - section 44 (2) (MCL 169.244) of the Act prohibits contributions by one candidate committee to another candidate. A federal candidate is not prohibited from contributing to a state candidate.
>
> William Faust - 10/23/81 - although a joint rally is not a fundraising event, previous interpretations applicable to joint fundraisers are helpful in preventing unlawful contributions at such events.
>
> Robert A. Welborn - 7/11/84 - a candidate committee is not prohibited from having a joint fundraiser with a charitable organization.

This letter does not specifically respond to the fact situations you present. As indicated above, the prior rulings appear to deal with the operation of such functions.

It should also be noted that in your letter you cite a "joint fundraiser between Representative Doe Campaign Committee and Representative Doe Officeholder Expense Fund" as one example of joint fundraising activity. The Department has never issued a statement concerning the legality of such activity. This letter should not be construed as an endorsement of the legality of concerted fundraising activity between an individual's candidate committee and officeholder's expense fund. It you desire a ruling or interpretation as to whether such activity is legal within the context of the Act, you should set forth a request with a detailed statement of facts.

The letters issued previously with respect to joint fundraising events have on occasion used the term "guidelines" to refer to the various steps recommended for the conduct of such events. This was an unfortunate selection of terms. "Guidelines" is a defined term in the Michigan Administrative Procedures Act. The definition is found at MCL 24.203(6) which states:

> "6) 'Guideline' means an agency statement or declaration of policy which the agency intends to follow, which does not have the force or effect of law, and which binds the agency but does not bind any other person."

It is clear that these interpretations of the Act were neither guidelines nor rules pursuant to the Act. As indicated in the letters themselves, they were "informational only." Under the terminology of the Administrative Procedures Act they were issued as "interpretative statements." Although it is not defined in the Administrative Procedures Act, its meaning has been elaborated by the courts. The most extensive discussion of the differences between rules and interpretative statements is found in Michigan Farm Bureau v Bureau of Workmen's Compensation, 408 Mich 141 (1980).

As you know, legislation cannot provide detailed answers to every question that may arise under a statute. Administrative agencies are often called upon to add the flesh to the bones of the law. The Department of State has given compliance with the Act a high priority. Rather than relying on the implementation of the criminal and civil sanctions of the Act, the Department has consistently sought to advise the public how to comply with the statute. The materials thus far produced regarding joint activity by committees have been directed toward insuring compliance before enforcement becomes the only available tool.

For the reasons set forth above, this response is informational and does not constitute a declaratory ruling. If after reviewing the sources cited you believe that a question remains regarding an actual statement of facts you may, of course, request a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

Enclosure

Campaign Finance
Reporter
Elections Division Information Bulletin

Richard H. Austin Secretary of State Lansing, Michigan 48918

Volume 10, No. 2 July, 1986

IN THIS ISSUE:

Campaign Statements Due

-- FILING REQUIREMENTS FOR AUGUST 5, 1986 PRIMARY AND STATE POLITICAL PARTY CONVENTIONS --

Campaign Statement filing deadlines for the August 5, 1986 primary and the state political party conventions and the requirements which cover "late contribution reports" are discussed below. Carefully read this article to determine if the filings described are required of your committee. A committee that has a Reporting Waiver is not required to file Campaign Statements. The Reporting Waiver is discussed at the end of this article.

- A committee loses its Reporting Waiver if it receives or spends more than $1,000.00 for an election. Note that funds leftover from one election count toward the "amount received" for the next election. If the Reporting Waiver is lost, the committee must file the next Campaign Statement required of the committee.

Joint Fundraisers

Candidates who wish to hold a joint fundraiser must adhere to the following procedures to avoid violations of Michigan's Campaign Finance Act.

WRITTEN AGREEMENT: A written agreement must be developed by the Candidate Committees that plan to participate in the joint fundraiser. The treasurer of each of the participating Candidate Committees must keep a copy of the agreement with the committee's records. A Candidate Committee participating in the joint fundraiser is not required to file the agreement with its filing official.

- The written agreement must describe what each committee's contribution and expenditure share will be. Contribution and expenditure shares must be expressed as percentages. A committee's expenditure share must equal the committee's contribution share. For example: "The ABC Committee will receive 60 percent of the contributions received at the fundraiser and will make 60 percent of the expenditures necessary to hold the fundraiser. The XYZ Committee will receive 40 percent of the contributions received at the fundraiser and will make 40 percent of the expenditures necessary to hold the fundraiser."

- The written agreement must detail how expenditures will be handled. Expenditures can be handled in two ways: Under the first method, each committee agrees to pay its expenditure share at the time each expenditure is made or billed. Under the second method, one of the committees agrees to make all of the expenditures and the other committee(s) agree to provide the necessary reimbursement. The reimbursements must be made within a reasonable period of time and must correspond to the committee's agreed expenditure share.

- The written agreement must detail how contributions and other receipts will be handled. Contributions and other receipts must be handled in the following manner: The committees agree to open a joint account in a bank, credit union or savings and loan association for the deposit of all contributions and other receipts related to the fundraiser. Funds deposited in the joint account are then transferred, without delay, into each of the committee's official depository accounts. The fund transfers must correspond to each committee's agreed contribution share. Expenditures cannot be made from the joint account established by the committees for the fundraiser.

  NOTE: As soon as the joint account is opened, each of the committees participating in the joint fundraiser has 10 days to amend its Statement of Organization to reflect the establishment of a "secondary depository."

ADVERTISING THE EVENT: Advertisements and invitations for a joint fundraising event must include the information detailed below.

- An explanation that the event to be held is a joint fundraiser. The explanation must include the names of the participating committees, the names of the participating candidates and the offices sought by the participating candidates.

- What each participating committee's contribution share will be. If any of the participating committees are subject to contribution limitations, the contributors should be reminded to use the contribution share information to gauge whether they are exceeding the applicable contribution limitation .

- Specific instructions on how checks should be made out to the fundraising event.

RECORDKEEPING AND REPORTING REQUIREMENTS: The treasurers of committees that participate in a joint fundraiser must carefully record the expenditures made for the event and the contributions and other receipts received in connection with the event. Participating committees that are required to file Campaign Statements must accurately report the recorded information. Participating committees that are not required to file Campaign Statements are not required to report the recorded information. Recordkeeping and reporting requirements related to joint fundraising events are detailed below.

- Each participating committee records the name and address of each contributor, the date of the contributor's contribution, and the amount the committee received from the contributor's contribution.

- A participating committee reports the name and address of a contributor if the amount of the contributor's contribution received by the committee exceeds $20.00. The date the contributor made the contribution is also reported. The committee discloses only the amount of the contributor's contribution received by the committee -- not the entire amount of the contribution.

- If one of the participating committees has been designated to make all of the expenditures related to the fundraiser, the designated committee must itemize all expenditures which exceed $50.00. When reporting these expenditures, the committee must specify, under the "Purpose" column on the Expenditure Schedule (1B), that the expenditures were related to a joint fundraiser. When the committee that reports the expenditures is reimbursed by the other participating committees, the reimbursements are reported as "other receipts" on the Receipts Schedule (1A). When reporting a reimbursement as an "other receipt," the committee must check the "miscellaneous" box (column 4 on the Receipts Schedule) and indicate that the other receipt was a reimbursement received in connection with a joint fundraiser. The committees that provide reimbursement for the expenditures must report the amount transferred to the committee that made the expenditures with an explanation that the amount transferred was reimbursement for joint fundraiser expenses. If the amount a committee must reimburse for any given expenditure made for the fundraiser exceeds $50.00, the reimbursement for the expenditure must be separately ite-itemized on the expenditure Schedule (1B) with the following information entered in the "Purpose" column: (1) an explanation that the amount transferred was reimbursement for a joint fundraiser expense and (2) a description of the original expenditure which includes the name and address of the person to whom the original expenditure was made.

- If each participating committee pays it share of the expenditures as the

expenditures arise, the committees must report their respective share of each expenditure. If a participating committee's share of any given expenditure exceeds $50.00, the expenditure share must be itemized on the Expenditures Schedule (1B)

- A committee that participates in a joint fundraiser must complete a Fundraiser Schedule (1F) to document the event. The Schedule must indicate that the event held was a joint fundraiser and show the share of contributions received by the committee and the share of expenditures made by the committee in connection with the event. The Schedule is not completed to show the total amount of contributions received or the total amount of expenditures made by all of the committees that participated in the event. The Schedule is filed with the next Campaign Statement required of the committee.

Additional Notes on Joint Fundraisers

- Should a candidate who participated in a joint fundraiser decide not to run for office, the funds received by the candidate from the joint fundraiser must be given to a Political Party Committee, a tax-exempt charitable institution, or to the contributors who gave the funds. The funds cannot be given to the other candidates who participated in the fundraiser.

- A Candidate Committee is not permitted to accept corporate funds. If a Candidate Committee receives corporate funds in connection with a joint fundraising event, the funds must be returned to the corporation; the corporate funds may not be deposited in an Officeholder Expense Fund account the candidate may have.

- A contributor to a joint fundraising event must make a contribution to each of the participating Candidate Committees in the ratio publicized to the contributors; the contributor may not choose to allocate his or her contributions differently.

- A Candidate Committee may hold a joint fundraiser with a Political Party Committee or a tax-exempt charitable organization as long as the percentage of the expenditures paid by the Candidate Committee in connection with the event does not exceed the percentage of the contributions the Candidate Committee takes from the event. As a Political Party Committee or a non-corporate tax-exempt charitable organization can contribute to a Candidate Committee, the percentage of the expenditures paid by a Political Party Committee or a non-corporate tax-exempt charitable organization in connection with a joint fundraising event held with a Candidate Committee may exceed the percentage of the contributions the Political Party Committee or the non-corporate tax-exempt charitable organization takes from the event. Applicable contribution limits apply to this arrangement. NOTE: A charitable or political party organization must register as a committee under the Campaign Finance Act as soon as it contributes $200.00 or more to a state or local Candidate Committee.

- A joint fundraiser may be held by a state or local Candidate Committee and a federal Candidate Committee as long as the percentage of the expenditures paid by the state or local Candidate Committee in connection with the event does not exceed the percentage of the contributions the state or local Candidate Committee takes from the event. (This is the same principle that

applies when two or more state or local Candidate Committees hold a joint fundraiser.) As a federal Candidate Committee can contribute to a state or local Candidate Committee, the percentage of the expenditures paid by a federal Candidate Committee in connection with a joint fundraising event held with a state or local Candidate Committee may exceed the percentage of the contributions the federal Candidate Committee takes from the event. Applicable contribution limits apply to this arrangement. NOTE: A federal Candidate Committee must register under the Campaign Finance Act as soon as it contributes $200.00 or more to a state or local Candidate Committee.

Candidate Committee Dissolution

The Act specifies when and under what conditions a Candidate Committee may be dissolved. As a dissolved committee has no further filing obligations under the Act, the dissolution of the committee is, in effect, the final compliance step.

WHEN A COMMITTEE CAN BE DISSOLVED: To be eligible for dissolution, a committee must have no assets or outstanding debts. An unpaid late filing fee is considered to be a committee debt. A candidate who is not elected to office is encouraged to dissolve his or her Candidate Committee as soon as practicable after the election. An officeholder cannot dissolve his or her Candidate Committee until his or her term of office expires.

DISPOSITION OF LEFTOVER FUNDS: The Act specifies that funds leftover in the Candidate Committee's account must be contributed to a Political Party Committee, contributed to a tax-exempt charitable institution or returned to contributors.

DISSOLVING A COMMITTEE: If the committee has a Reporting Waiver, it is dissolved by filing a single-page Dissolution Campaign Statement form. If the committee does not have a Reporting Waiver, it is dissolved by filing a final Campaign Statement with supporting schedules. A detailed Dissolution Campaign Statement can be combined with any other Campaign Statement required of the committee as long as the committee dissolves on or before the closing date of the Campaign Statement.

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